



POLICE DEPARTMENT

July 16, 2015

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Raymond Tomins
Tax Registry No. 902480
Warrant Section
Disciplinary Case No. 2013-10637

The above-named member of the Department appeared before the Honorable Claudia Daniels-DePeyster on January 7, 2015, charged with the following:

1. Said Sergeant Raymond Tomins, on or about May 16, 2012, at approximately 0840 hours while assigned to the Warrant Section and on duty, in the vicinity of [REDACTED] engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he entered said premises without sufficient legal authority.

P.G. 203 10, Page 1, Paragraph 5 – PUBLIC CONTACT-PROHIBITED CONDUCT

2. Said Sergeant Raymond Tomins, on or about May 16, 2012, at approximately 0840 hours while assigned to the Warrant Section and on duty, in the vicinity of [REDACTED] engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he participated in the search of said premises without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT-PROHIBITED CONDUCT

The Civilian Complaint Review Board (CCRB) was represented by Raasheja Page, Esq., and Jonathan Fogel, Esq., and Respondent was represented by Andrew Quinn, Esq. Respondent, through his counsel, entered a plea of Not Guilty to the subject

charges. CCRB called Paula Boomer and Detective Michael Ragona. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

On April 14, 2015, the Honorable Claudia Daniels-DePeyster resigned her position as Assistant Deputy Commissioner, Trials. Counsel for both sides were informed of the Department's intention to have the matter reassigned, for the purpose of reviewing the transcript and rendering a verdict in this case. No objections to the reassignment were raised. After reviewing the entire transcript, including exhibits, I submit the following report and recommendation.

DECISION

This tribunal finds that there was insufficient evidence to support a finding that Respondent engaged in misconduct by entering and searching a residence without legal authority. Accordingly, Respondent is found Not Guilty.

FINDINGS AND ANALYSIS

The following is a summary of the relevant facts that are undisputed. On May 16, 2012, at approximately 0840 hours, Sergeant Raymond Tomins and Detective Michael Ragona entered the residence of Paula Boomer at [REDACTED] Tr. 11, 47, 82-83) The officers informed Paula that they had a warrant and were searching for her relative, Person A (Tr. 14, 29, 48) During the course of the search, Paula followed the investigators around the house voicing her displeasure and objecting to their

presence in her home. (Tr. 15, 49-50) The investigators did not find Person A. in Paula's home. (Tr. 19, 95)

Respondent is responsible for supervising a team of detectives and police officers that investigates and executes warrants as part of the Brooklyn North Warrant Squad. (Tr. 80) Respondent received notification from the Division of Parole that Person A had violated his parole. (Tr. 83) Detective Ragona was responsible for conducting the investigation that led to the search of Paula's house. (Tr. 54, 82) During his investigation, Detective Ragona learned that Person A had been the subject of an I-Card for an assault that occurred at his parole address, [REDACTED] (Tr. 49) The only other address identified by Detective Ragona during his investigation was [REDACTED] his mother's address. (Tr. 54-55) Person A had reported Paula's address as his residence during prior arrests and had reported it to the Department of Motor Vehicles. (Tr. 19, 50-51, 54, 93) Sometime after the investigators finished their search and left her home, Paula called her local precinct and the CCRB to file a complaint. (Tr. 18, 36)

Specification 1

Respondent is charged with entering Paula Boomer's home without sufficient legal authority. At trial, Paula Boomer testified that on the morning of May 16, 2012 she heard another relative, Person B, open the door to her home. Person B had been released from Rikers Island earlier that morning and had arrived at the house shortly before the officers arrived. According to Paula, Person B opened the door because he was expecting his friends to welcome him back after his release. Paula was upstairs getting ready when she heard Person B say, "[REDACTED] somebody is here to see you."

When Paula came downstairs, the officers had already crossed the threshold into her home. Paula testified that she said, "Hello. How may I help you?" and the officers informed her that they were there to look for Person A. She told them that he did not live there and they replied by saying that they had a warrant. (Tr. 11-14, 24-25, 29-30)

Detective Ragona testified that Paula answered the door when he knocked. She asked why the officers were there and he told her that they were looking for her relative because he had violated his parole. According to Detective Ragona, Paula invited the officers into her home and they began their search. He did not recall the exact words used, but remembers that she explicitly invited them in. Shortly thereafter, Paula's relative, Person B, came downstairs and angrily began questioning the officers about why they were there. (Tr. 48, 50, 59, 63)

Respondent testified at trial that he could not recall the exact circumstances under which he entered Paula's house, but believes that "a woman answered the door." Respondent further testified regarding the entry into Paula's home by saying, "I just know that we were led into [...], the house, without any problems." (Tr. 83)

It is undisputed that the officers first gained entry into Paula's home without force after knocking on the front door. While the question of who opened the door for the officers remains disputed, it is unnecessary to make a determination based upon credibility regarding who answered the door because the initial entry was consensual under either circumstance. It is self-evident that if Paula answered the door to her home and allowed the officers inside, as was the testimony of Detective Ragona, their entry would be consensual and no objection could be sustained. Additionally, if Person B

opened the door for the officers, as Paula testified at trial, their entry would also be consensual and any objection would be without merit as verbal consent to enter is not necessary. *See United States v. Griffin*, 530 F.2d 739 (7th Cir.1976) (leaving door open and stepping back was invitation for officers to enter).

Accordingly, Respondent is found Not Guilty of entering Paula's home without sufficient legal authority.

Specification 2

Respondent is also charged with participating in the search of Paula's home without sufficient legal authority. At issue is whether the officers attempting to execute the parole warrant on Person A reasonably believed that he was a resident of [REDACTED]

[REDACTED] I find that Respondent's search of Paula's home was based on objectively reasonable investigative police work and therefore does not amount to actionable misconduct.

An arrest warrant founded on probable cause affords a police officer limited authority to enter a dwelling in which the subject of the arrest warrant lives when there is reason to believe that he is within. *Payton v New York*, 445 U.S. 573 (1980). It is well-settled law that an arrest warrant does not justify the search of a third party's residence absent a search warrant. *Steagald v. United States*, 451 U.S. 204 (1981). However, Steagald does not prevent police entry if the arresting officers executing the arrest warrant at the third party's home have a reasonable belief that the suspect resides there and have reason to believe that the suspect is present at the time the warrant is executed. *United States v. Boyd*, 180 F.3d 967, 977 (8th Cir. 1999). The "officers' assessment need not in fact be correct; rather, they need only reasonably believe that the suspect resides at

the dwelling to be searched and is currently present at the dwelling." *United States v. Risse*, 83 F.3d 212, 216 (8th Cir. 1996).

Based on the totality of the circumstances I find that Respondent possessed a reasonable belief that the residence in question was the suspect's dwelling and that he had reason to believe that the suspect was in the dwelling at that time. *Payton*, 445 U.S. 573 (1980) In fact, given the circumstances here, it might have been remiss for Respondent and his team of investigators to not search for Person A at [REDACTED]

Detective Ragona testified that when investigating possible locations for suspects with outstanding parole warrants he searches various databases that include information such as arrest histories, accident reports, and Department of Motor Vehicle records. (Tr. 54). Throughout the course of his investigation, Detective Ragona determined that there were two addresses that Person A had previously reported; his parole address at [REDACTED] and his relative's address at [REDACTED] CCRB contended that the investigators knew Person A was paroled to 6 [REDACTED] therefore their search of Paula's home amounted to a third party residence search. It is true that "[t]he fact that a suspect may have lived at a particular residence at some point in time does not legally transform those premises into his residence for a period of indefinite duration." *People v. Cabral*, 147 Misc. 2d 1000, 1005 (1990). However, in this case, the search of Paula's home was not based solely on the fact that Person A was a resident at some point in the past. Rather, the search was conducted based on a combination of investigative findings, including that he had reported [REDACTED] as his address to the Department of Motor Vehicles and that members of his family resided there. It was apparent from Detective Ragona's investigation that Person A had a continued association with [REDACTED]

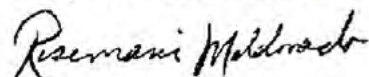
██████████ As a result, the officers had a reasonable belief that Person A resided at ██████████ despite reporting a different address to the Division of Parole.

The record also supports a finding that Respondent had reason to believe that the suspect was in the dwelling at that time. Based on their investigation, Detective Ragona became aware that Person A was the subject of an I-Card for an assault on his girlfriend that had allegedly took place at his parole address. Based on that information, they made a reasonable decision that Person A was unlikely to be at his parole address. CCRB contends that despite this knowledge, the investigators had no specific information indicating that Person A would be present at ██████████ on that particular day or time. I disagree and find that their assessment comports with what a reasonable officer would have done under similar circumstances.

It is important to note that the constitutional requirements set forth above are instructive, but not dispositive, of the disciplinary case before this tribunal. To sanction an employee for misconduct there must be some showing of fault on the employee's part, either that he acted intentionally (*Reiseg v. Kirby*, 62 Misc. 2d 632, 635 (Sup. Ct. Suffolk Co. 1968, *aff'd*, 31 A.D.2d 1008 (Second Dept. 1969)), or negligently (*McGinigle v. Town of Greenburgh*, 48 N.Y.2d 949, 951 (1979)). Mere mistakes or errors of judgment, lacking in willful intent and not so unreasonable as to be considered negligence, are not a basis for finding misconduct. *Ryan v. New York State Liquor Auth.*, 273 A.D. 576, 581 (Third Dept. 1948). The record is devoid of sufficient evidence that would support such a finding.

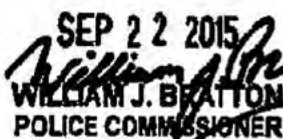
Accordingly, this tribunal finds that the preponderance of the credible evidence failed to establish that Respondent entered and searched Paula's home without sufficient legal authority. Therefore, he is found Not Guilty of the charges.

Respectfully submitted,



Rosemarie Maldonado
Deputy Commissioner Trials

APPROVED

SEP 22 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER